

1 And I have told them that if that happens, I will
2 promptly notify the person that I cannot represent and give
3 that party an opportunity to obtain other counsel. At the
4 moment, I don't see a conflict, but I can conceive that
5 conflict could develop. I just wanted to put that on the
6 record.

7 JUDGE STEINBERG: Any comment?

8 MR. WEBER: No comment. The Bureau agrees there is
9 a potential of conflicts between the different parties
10 especially because the order will allow for different
11 treatment of each party and the Bureau's satisfied as long as
12 the parties are aware that there is a potential of conflict
13 and Mr. Colby is willing to change representation if the
14 conflict arises. We're satisfied that there's no problem at
15 this time.

16 JUDGE STEINBERG: Now, this wasn't on my agenda, but
17 what do we do about Mr. Howe?

18 MR. WEBER: The Bureau will be preparing, if
19 necessary, I guess it would be a Motion for Summary Decision
20 as to Mr. Howe since he has not filed a Notice of Appearance
21 or a proper Notice of Appearance.

22 JUDGE STEINBERG: Well, we just crossed that bridge.
23 I mean, my reading from my reading of the Order to Show Cause,
24 the only mention of Mr. Howe was in Paragraph Four which just
25 says, "Ralph E. Howe was identified on company documents filed

1 with the Florida Department of State as the current director,
2 president, and registered agent." I don't think there are any
3 other references to Mr. Howe in the Order to Show Cause.

4 Now, the forfeiture order goes a little beyond that,
5 but not the Order to Show Cause. So it doesn't -- it doesn't
6 appear to me that he's been tied in with any of the alleged
7 misconduct, as least specifically in the text. I'm just
8 throwing that out -- I don't know if that's going to be a
9 problem. You can ask in Summary -- you could file a Motion
10 for Summary Decision, but since he hasn't filed an appearance,
11 you don't have -- you're not technically required to serve
12 him.

13 So let's say the Motion for Summary Decision is
14 unopposed, but how can I rule against him when not even the
15 Order to Show Cause contains any allegations against him? I
16 mean, that's another dilemma that I have. I don't know what I
17 would do. Maybe I would mail a copy to Mr. Howe and request
18 that he comment on it. I mean, I don't know. I don't know
19 what I'm going to do. I'm just speculating now. But that's
20 another problem.

21 How can I -- how can I -- I have to use my
22 independent judgement and let's say the Motion for Summary
23 Decision is -- the ultimate bottom line you want me to reach
24 is Mr. Howe is barred from participating in any future
25 auctions and barred from holding Commission licenses.

1 But there have to be some facts there that I can
2 base that on and I have to be fair to him even though he's not
3 here, and if there's no proof that he engage in any of this
4 misconduct, I don't think I could find against him even though
5 he's not here. Maybe the better course would be to -- I'm
6 just -- I'm not saying to do this. Again, I'm thinking -- I
7 like to think out loud and sometimes I'm sorry that I think
8 out loud.

9 Maybe the better course would be let's wait, if we
10 have a hearing, and see. Maybe something will be developed
11 that will tie him into this. But right now, based on the four
12 corners of the Order to Show Cause, there's nothing in there
13 that mentions him other than that sentence in Paragraph Four
14 which merely serves to identify him. I mean, unless I missed
15 something.

16 MR. WEBER: I have two comments and then see if this
17 changes your impression in any way. The first comment would
18 just be that the Order to Show Cause is -- excuse me --
19 essentially the Commission ordering Mr. Howe to show that he
20 should be allowed to participate in future auctions and be a
21 Commission licensee, and he has failed to do so.

22 My second comment would be that he is indeed a
23 principal of Commercial Realty, and the Order does certainly
24 state misconduct by Commercial Realty, and I think the
25 principal should be held liable for a company's misconduct.

1 JUDGE STEINBERG: Well, we can -- we can argue that.

2

3 MR. WEBER: But if you'd prefer me to wait to filing
4 anything against Mr. Howe, that'd be fine.

5 JUDGE STEINBERG: It's up to you. I mean, I'm just
6 pointing these things out. Like I said, I like to think out
7 loud and I can foresee this might become a problem. I'm sorry
8 Mr. Howe's not represented here. He should be represented
9 here.

10 MR. WEBER: We intend to use him as a witness. I
11 mean, the Bureau would've preferred him to be represented here
12 as well and have him be a party.

13 JUDGE STEINBERG: So, I mean, you know, you do
14 whatever in your good judgement needs to be done and I'll do
15 what I need to do. I mean, I'm not -- I'm not saying that if
16 you filed a Motion for Summary Decision that I would deny it
17 because of this. I'm just pointing out a problem that you
18 might have to address or overcome or -- well, at least
19 address. Like I said, these things, I think out loud. But
20 I'd like to have you have the benefit of my thoughts so that
21 you can factor them in.

22 MR. COLBY: I could possibly be helpful. I do not
23 represent Mr. Howe and I have no intention of representing Mr.
24 Howe and could not represent Mr. Howe. But I would point out
25 that a Motion for Summary Decision wouldn't necessarily have

1 to be accompanied by proof. In other words, the nature of
2 such a motion is that it's supported by affidavits and things
3 of that sort. I just pointed that out to be helpful to the
4 Judge and for no other reason. But I think maybe it resolves
5 the dilemma he has.

6 JUDGE STEINBERG: Anything else we have to cover?

7 MR. WEBER: No, Your Honor.

8 JUDGE STEINBERG: Mr. Colby?

9 MR. COLBY: No, Your Honor.

10 JUDGE STEINBERG: Let's go off the record and talk
11 about dates.

12 (Off the record 10:43 a.m.)

13 (On the record 10:53 a.m.)

14 JUDGE STEINBERG: While we were off the record, we
15 discussed procedural dates and we've agreed to the following
16 schedule. June 2, 1995 will be the date for completion of all
17 discovery. June 14, 1995 will be the date for the exchange of
18 written direct cases, and I'll just note that all exhibits
19 must be received by all parties not later than that date.

20 June 21, 1995 will be the date for notification of
21 witnesses desired for cross examination and I'll note that
22 such notification may be made by telephone or FAX. If oral
23 notification is given, it must be confirmed in writing. June
24 28, 1995 will be the date for objections to witness
25 notification, and if that could be -- if that could be either

1 FAX'd or hand-served, it would be -- especially FAX'd to me or
2 hand-served on me so that I could issue a ruling promptly, it
3 would be appreciated.

4 And then July 11, 1995, commencement of the hearing
5 at 10 a.m. in the Commission's Washington, D.C. offices, and
6 I'll say -- is there going to be any rebuttal? Well, I guess
7 you'll have to see. If there's going to be any rebuttal,
8 it'll -- it should commence immediately after the conclusion
9 of the direct cases.

10 We don't -- we're not going to take any kind of
11 break, at least extended break, before we have any rebuttal.
12 I mean, if we finish the direct cases at two in the afternoon,
13 then maybe we'll break and commence rebuttal the next day.
14 But it's certainly not going to be breaking one day and then
15 coming back for rebuttal in two weeks. Let's get everything
16 over. I mean, that's assuming that there's any rebuttal. And
17 those dates are agreeable with the Bureau?

18 MR. WEBER: Yes, Your Honor.

19 JUDGE STEINBERG: And with Mr. Colby?

20 MR. COLBY: Yes, Your Honor.

21 JUDGE STEINBERG: Anything further? Mr. Colby?

22 MR. COLBY: I have nothing further.

23 JUDGE STEINBERG: Mr. Weber?

24 MR. WEBER: The Bureau has nothing.

25 JUDGE STEINBERG: Then what we'll do is we'll

1 conclude the prehearing conference and I want to, you know,
2 thank you very much for coming and I think it was a very
3 productive session. If you need any other kind of conference
4 or meeting, just give me a call and I'll try to talk you out
5 of it, and if I can't, then we'll schedule one.

6 Or if you want to have a conference call about
7 anything, I'm there. I can actually arrange a three-way
8 conference call. I've only messed up on those a couple times.
9 Then we'll go -- we'll go off the record and stand in recess
10 now.

11 (Whereupon, at 10:55 a.m. on Wednesday, March 29,
12 1995, the prehearing conference was adjourned.)
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CERTIFICATE OF REPORTER, TRANSCRIBER, AND PROOFREADER

Commercial Realty

Name

95-26

Docket No.

Washington, D.C.

Place

March 29, 1995

Date

We, the undersigned, do hereby certify that the foregoing pages, numbers 1 through 31, inclusive, are the true, accurate and complete transcript prepared from the reporting by Marykae Fleishman in attendance at the above identified proceeding, in accordance with applicable provisions of the current Federal Communications Commission's professional verbatim reporting and transcription Statement of Work and have verified the accuracy of the transcript by (1) comparing the typewritten transcript against the reporting or recording accomplished at the proceeding and (2) comparing the final proofed typewritten transcript against the reporting or recording accomplished at the proceeding.

4/5/95

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